



S T A T E B A R O F M I C H I G A N

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SENT VIA EMAIL

June 13, 2006

306 Townsend Street
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The Honorable William Van Regenmorter
Chair, House Judiciary Committee
State Capitol
P.O. Box 30014
Lansing, MI 48909-7514

**Re: June 14, 2006 House Judiciary Committee Hearing
HB 4160 (Pastor) Jurisdictional Limit in Small Claims Suits**

Dear Chairman Van Regenmorter:

At its June 10, 2005 meeting, the State Bar of Michigan's Board of Commissioners unanimously voted to **oppose in principle¹ HB 4160**. This position was adopted after consideration of recommendations made by the Civil Procedure and Courts Committee, Standing Committee on Justice Initiatives and the Judicial Conference.

The basis of the State Bar's position is public protection. Small claims court is designed to resolve disputes involving relatively small amounts of money without the costs of legal expenses that would in effect negate the benefit of winning the case. The risk that the public bears in small claims court is that the small claims process, which is conducted without formal due process protections and without professional counsel, may not protect their interests as well as a traditional trial. Compounding the risk is the fact that there is no appeal from the judgment. For this reason, it is important to keep the amount in controversy in small claims court matters low.

It is also important to note that in some small claims court matters the lack of discovery can create additional risk. The small claims court venue does not provide either party the opportunity before trial to examine the merits of a claim to determine if it is fraudulent or frivolous. The greater the amount at stake in a decision, the greater the value of rigorous evidentiary standards. Parties faced with the threat of a sizeable judgment need the opportunity to review the merits of the claim in advance of trial. Not only is such advance discovery unavailable in small claims court proceedings, but the small claims hearing itself, with fewer safeguards, cannot be counted on to expose false claims in all cases.

The typical small claims case involves disputes over debt. In small claims, defendants generally do not have the ability to raise legitimate counterclaims or offsetting claims that lawyers would bring in district court. The question in a typical small claims court is simply "is the money owed?", notwithstanding that the facts of the case are often more complex than the small claims proceeding reveals, to the disadvantage of the unrepresented defendant. The experience of legal aid attorneys is that in cases where attorneys become involved and remove cases from small claims to district court, and then raise counterclaims and affirmative defenses, a debt collector who has overreached will often settle or withdraw the complaint. Additionally, pro se litigants may not fully understand the right to remove a case to district court when they receive the notice provided with the summons for small claims. By

¹ Definition of oppose in principle: Pending legislation that the State Bar opposes but is not the subject of active lobbying effort. The State Bar is on record on this position and will explain it upon request.

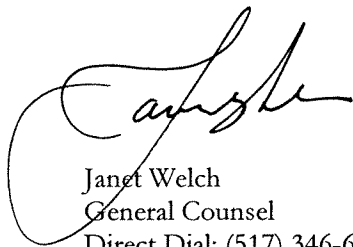
raising the jurisdictional amount, more cases will be brought in small claims court, and consumers' limited ability to defend against these lawsuits will raise further consumer protection concerns.

With an increased jurisdiction limit, businesses will be able to bring more cases in small claims court. Businesses acquire a sophistication by regular appearances in small claims court that works to the disadvantage of consumers, who arrive in court completely unfamiliar with the process. Small claims proceedings do not include the protections available in traditional trials against violations of collection or consumer laws by the alleged creditor.

An ancillary question that should be investigated in any consideration of changing the jurisdictional limit of small claims court is the impact on court resources, caseflow, and revenues. The adjudication of small claims cases is in some ways more burdensome on judges than traditional adjudications in which all the players – the judge and attorneys – are working within a defined structure under commonly understood rules. An additional consideration is that if many cases are shifted from traditional district court to small claims, the amount of filing fee revenue to the court could decrease significantly.

These comments are simply an outline of the many concerns offered to the State Bar by lawyers statewide. We would be happy to make further resources available on this issue at your request. We appreciate your consideration of the State Bar's position.

Sincerely,



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